

SECOND AMENDED FINAL STATEMENT OF REASONS

1) The Update to the Initial Statement of Reasons

There are no changes to the initial statement of reasons.

2) Summary of Comments Received During the 15-Day Comment Period and Department Response

The proposal was noticed on July 19, 2011, and made available to the public from July 19, 2011 through August 3, 2011. The following four individuals provided comments in letters received by the department by facsimile:

Identifying Number	Commenter Name Business Name
F-1	Brett Elkins, President Traffic Safety Consultants, Inc.
F-2	Renee Kassin, President Pizza 4u Great Comedians
F-3	Deborah Elkins, President
F-4	Bruce Elkins, Owner Cheap School

Commenters F-1 through F-4 provided comments that were presented during the initial 45-day comment period. Those comments were responded to in the Final Statement of Reasons and the Amended Final Statement of Reasons. Those documents were supplied to previous commenters through U.S. mail and email. Because the comments received are not directly related to the amendments and because the comments have already been considered and responded to, the department will not be responding to these comments in the Second Amended Final Statement of Reasons. Instead, the department reasserts its statutory authority to set Traffic Violator School program fees and maintains that the fees are sufficient to cover the costs of administering the Traffic Violator School program.

One letter was received by email.

Identifying Number	Commenter Name Business Name
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E-1	Bill Niles, President California Traffic School Association
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Mr. Niles provided the following comments that were not presented during the initial 45-day comment period.

- 345.00 (g) refers to an administrative fee that “ . . . *shall be assessed by the court of jurisdiction and transmitted to the department* . . . “. This sounds like mandatory language to us, and under what authority can the DMV mandate by Regs that a court perform any act?

Department’s Response: Vehicle Code sections 42007 and 42007.1 mandate the collection of the administrative fee by the courts on behalf of the department. This regulation establishes the amount of the fee as required by Vehicle Code section 11208.

- 345.15 (a)(1) – refers to a form OL 712 (rev10/94). A copy of the proposed replacement OL 712 form, obtained from the DMV, does not contain the information required by 345.15 (a)(1)(C), amongst others.

Department’s Response: The language of this proposed action was modified to make one substantial change to the fees and to make minor, clarifying changes. Sections 345.02, 345.04, 345.15, 345.18, 345.20, 345.23, and 345.26 are added to the proposed language and are modified to ensure clarity in the newly establish fees.

These sections were added to the proposed language for the single purpose of eliminating fee references that are not consistent with the fees being established in the proposal as authorized under Assembly Bill (AB) 2499. Implementation of AB 2499 is a major undertaking that requires the establishment of new regulations and the modification of existing regulations to be divided into multiple proposals. All of these sections are in the process of being deleted or amended to reflect the new TVS program requirements. The changes are in OAL File Number 2011–0425–01, Schools for Traffic Violators – Application and Curriculum Requirements.

The proposed modifications make no changes to the existing language referencing the OL 712. The OL 712 is a form that will be obsolete under AB 2499 requirements. This section and the reference to the revised form are being modified as part of the regulatory proposal noted above.

- The proposed OL 712 (rev 2/2011) does not reflect the requirements of 345.15, and is either incomplete or unusable since the copy provided to us does not have a provision for the judicial district nor a provision for a proper

signature block. Without the ability to view and review the final versions of the full set of any proposed OL forms, we are unable to make further comments or suggestions.

We do not see how these Regs can proceed to the OAL approval process without first having an approved set of OL forms that are referred to in the Regs, and reviewed by the traffic school industry.

Department's Response: This action does not contain form amendments.

- The phrase "TVS Classroom Location List" is used many times throughout this modified set of Regs without defining what that term is meant to mean.

Department's Response: This modification does not change any language related to the TVS Classroom Location List. Language addressing the classroom lists can be found in OAL File Number 2011-0425-01, Schools for Traffic Violators – Application and Curriculum Requirements.

- The DMV has failed to comply with the provisions of Gov.Code section 11346.45 to improve the quality of these Regs, to avoid adverse economic impact on small business (Gov. code 11346.3), to avoid the elimination of jobs (Gov. code 11346.3(b)(1)(A)), and to seek reasonable alternatives (Gov. code 11346.2 (b)(3)(A) & (B)). Had these requirements been followed reasonable alternatives could have been found to reduce any adverse impact on classroom traffic schools.

Department's Response: The department has complied with all rulemaking activities prescribed by the Administrative Procedures Act. The department has acknowledged the adverse economic impact that may be felt by some Traffic Violator School program providers; however, AB 2499 placed home study and internet programs under the authority of the department and the department is required to promulgate regulations to ensure all programs are operating in a uniform manner. There are no alternatives that would allow the department to implement a program of this breadth while ensuring all departmental policies, standards, and objectives are met.

- RECOMMENDATION #1: That the language of 345.00(g) be corrected appropriately.

Department's Response: As described above, it is unnecessary to amend Section 345.00(g).

- RECOMMENDATION #2: Produce and provide a full set of final OL forms for proper review by the classroom traffic school industry; otherwise the regulatory process is flawed.

Department's Response: This action does not amend OL forms. OL forms are amended in OAL File Number 2011-0425-01, Schools for Traffic Violators – Application and Curriculum Requirements. Further, this commenter was personally provided with current and amended OL forms on June 27, 2011 at the time of the public hearing for OAL File Number 2011-0425-01 relating to the Application and Curriculum Requirements.

- RECOMMENDATION #3: Provide definitions of phrases where required to clarify otherwise ambiguous or unclear language in these proposed modified Regs.

Department's Response: Assuming the commenter is referring to the TVS Classroom List as discussed in a previous comment, no changes are being made to this term in this regulatory action.